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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,262	08/26/2003	Brian Harden	280/016 DC	2074

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EXAMINER	
VARGOT, MATHIEU D	
ART UNIT	PAPER NUMBER
1791	

MAIL DATE	DELIVERY MODE
06/25/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/647,262	HARDEN ET AL.	
	Examiner	Art Unit	
	Mathieu D. Vargot	1791	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 March 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *15-30,38,41-46,51-55,57,61,62 and 65-70* is/are pending in the application.

4a) Of the above claim(s) *28-30,38,46,51-55 and 57* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *15-27,41-45,61,62 and 65-70* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *9/9/08*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

1.The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 15-17, 19-23, 41, 61 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over European Patent Application 175,460 in view of European Patent Application 164,834 essentially for reasons of record noting the following.

While the primary reference does not **explicitly** disclose making more than one grating, it is common knowledge in the optical art—and indeed the plastic molding art in general-- to make a master—or mold-- that contains an optical—or other molding-- pattern for more than one article, so that a number of such articles can be made in a single cycle. It would have been obvious to have modified the method of the primary reference to include the making of more than one grating to produce multiple articles in a single pressing. Note that the making of multiple articles simultaneously employing a method used to make only a single article is generally considered to be within the skill level of the art if such involves merely a duplication of parts, which would be the case for the instant method. Modifying EP -460 to make multiple gratings that would then be separated as generally taught in EP -834 would simply not involve a patentable advance in the art.

2. Claims 18, 27 and 42-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over European Patent Application 175,460 in view of European Patent

Application 164,834 and Chou essentially for reasons of record as set forth in paragraph 1, supra and paragraph 3 of the previous office action.

3.Claims 24-26 and 65-70 are rejected under 35 U.S.C. 103(a) as being unpatentable over European Patent Application 175,460 in view of European Patent Application 164,834 and Napoli et al (see col. 2, lines 41-51) for reasons of record as set forth in paragraph 1, supra and paragraph 4 of the previous office action with these additional comments. Note that Napoli et al was applied for reasons of record, the reference teaching (see col. 2, lines 41-51) imprinting both sides of a substrate, an aspect submitted to be obvious in the method of the primary reference. The grating structures themselves would constitute optical lithographs.

4.The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 15-27 41-45, 61, 62 and 65-70 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-29 of U.S. Patent No. 6,610,166 essentially for reasons of record. Unfortunately, the terminal disclaimer submitted January 16 2007 has not been officially reviewed and accepted for compliance. Upon its acceptance—and a message concerning this matter is being sent as of the mailing of this letter-- the rejection will of course be removed.

5.Applicant's arguments filed March 16, 2009 have been fully considered but they are not persuasive. Applicant submits that EP -460 does not disclose the formation of multiple optical elements, and hence cannot be modified by EP -834. Again, while the primary reference does not explicitly teach making multiple gratings from a single master, it is respectfully submitted that such is well within the skill level of the molding art and is routinely done as applicant should be well aware. It is submitted that modifying EP -460 to include such an aspect would have been obvious to one of ordinary skill to facilitate the formation of multiple gratings from a single pressing operation, thereby reducing cycle time. Concerning Napoli et al, the reference teaches imprinting opposite sides of a substrate and that is the reason it had been applied in earlier actions. Hence, applicant's comments concerning this reference are not understood. The optical lithographs would include the optical gratings thus formed. Also, it is noted that Napoli et al is making a lithographic mask. If gratings are not considered to be lithographs, then the instant article would have been obvious in the combination as applied.

6.**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7.Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mathieu D. Vargot whose telephone number is 571 272-1211. The examiner can normally be reached on Mon-Fri from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson, can be reached on 571 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Vargot
June 22, 2009

/Mathieu D. Vargot/
Primary Examiner, Art Unit 1791